

PAYNE & FEARS LLP
Scott O. Luskin, Bar No. 238082
sol@paynefears.com
Randy R. Haj, Bar No. 288913
rrh@paynefears.com
200 N. Pacific Coast Highway, Suite 825
El Segundo, California 90245
Telephone: (310) 689-1750
Facsimile: (310) 689-1755

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
J.C. Rozendaal (*pro hac vice pending*)
Chandrika Vira (*pro hac vice pending*)
Josephine Kim, Bar No. 295152
1101 K Street NW, 10th Floor
Washington, D.C. 20005
Telephone: 202.371.2600
Facsimile: 202.371.2540
Email: jcrozendaal@sternekessler.com
Email: cvira@sternekessler.com
Email: joskim@sternekessler.com

Attorneys for Defendant BTL Industries, Inc.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

INMODE LTD.,

Plaintiff,

v.

BTL INDUSTRIES, INC. D/B/A
BTL AESTHETICS,

Defendant.

Civil Action No. 2:23-CV-8583-
JWH-RAO

**DEFENDANT BTL
INDUSTRIES, INC'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS OR TRANSFER**

Table of Contents

	<u>Page</u>
I. Statement of Facts	1
II. Argument.....	3
A. The action should be dismissed because venue is improper for BTL under § 1400(b).	3
1. BTL does not reside in California and therefore venue cannot be found under the first prong of § 1400(b).	4
2. BTL does not have a regular and established place of business in California and therefore venue cannot be found under the second prong of § 1400(b).....	5
B. Even if venue were proper, the interests of justice and convenience weigh in favor of transfer to Massachusetts	7
1. <i>Jones</i> 3: Plaintiffs’ choice of forum: InMode is a foreign entity and, therefore, its choice of forum is given little deference.....	8
2. <i>Jones</i> 4 and 5: Contact with the forum: The parties’ lack of contacts in California weigh in favor of transfer to Massachusetts.	9
3. <i>Jones</i> 6 and 8: Cost of litigation and access to sources of proof: The witnesses and evidence weigh in favor of transfer to Massachusetts.....	10
4. <i>Jones</i> factor 10: The public interest factors weigh in favor of transfer to Massachusetts.	11
III. Conclusion.....	12

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Decker Coal Co. v. Commonwealth Edison Co.</i> , 805 F.2d 834 (9th Cir. 1986)	7
<i>Fox Factory, Inc. v. Sram, LLC</i> , No. 2:22-cv-04805-DOC-JC, 2023 WL 6370879 (C.D. Cal. Feb. 1, 2023)	11
<i>In re Cray Inc.</i> , 871 F.3d 1355 (Fed. Cir. 2017)	5, 6
<i>In re Genentech, Inc.</i> , 566 F.3d 1338 (Fed. Cir. 2009)	10
<i>In re Google LLC</i> , 949 F.3d. 1338 (Fed. Cir. 2020)	6
<i>Jones v. GNC Franchising, Inc.</i> , 211 F.3d 495 (9th Cir. 2000)	7
<i>In re Juniper Networks, Inc.</i> , 14 F.4th 1313 (Fed. Cir. 2021)	7
<i>Laltitude, LLC v. Dreambuilder Toy, LLC</i> , No. 22-cv-09324, 2022 WL 2156110 (C.D. Cal. Apr. 6, 2022)	4
<i>Ningbo Futai Elec. Ltd. v. QVC, Inc.</i> , No. 5:22-cv-02015-MCS-RAO, 2023 WL 4291652 (C.D. Cal. May 8, 2023)	9, 11, 12
<i>Piedmont Label Co. v. Sun Garden Packing Co.</i> , 598 F.2d 491 (9th Cir. 1979)	4
<i>Piper Aircraft Co. v. Reyno</i> , 454 U.S. 235 (1981)	9

1 *Signal IP, Inc. v. Ford Motor Co.*,
2 No. LA CV14-03106 10
3
4 *Starbuzz Tobacco, Inc. v. Gold Star Tobacco, Inc.*,
5 No. 19-cv-00408, 2019 WL 6888044 (C.D. Cal. July 29, 2019)..... 4
6
7 *T.C. Heartland LLC v. Kraft Foods Group Brands LLC*,
8 581 U.S. 258 (2017) 1, 2, 3
9
10 *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*,
11 137 S. Ct 1514 (2017) 4
12
13 *In re TS Tech USA Corp.*,
14 551 F.3d 1315 (Fed. Cir. 2008) 7
15
16 *Zinus, Inc. v. Classic Brands, LLC*,
17 No. CV 19-5455 PSG (EX), 2019 WL 8226076 (C.D. Cal. Oct. 3,
18 2019)..... 8
19
20 *In re ZTE (USA), Inc.*,
21 890 F.3d 1008 (Fed. Cir. 2018) 4
22
23
24
25
26

27 **Statutes**

28 28 U.S.C. § 1404(a) 1, 7
29 28 U.S.C. § 1406(a) 1, 3
30 35 U.S.C. § 1400(b)..... 1, 3, 4, 5
31 Fed. R. Civ. P. 12(b)(3) 1, 3
32
33
34
35
36
37
38

1 BTL Industries, Inc. is a Delaware corporation with a principal place of
 2 business in Massachusetts, and no regular and established place of business in
 3 California. BTL therefore moves to dismiss or, in the alternative, transfer this case
 4 to the District of Massachusetts pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C.
 5 § 1406(a) or 28 U.S.C. § 1404(a).

6 It is well established that venue in a patent infringement case is only proper in
 7 a district where the defendant is incorporated or where the defendant has a regular
 8 and established place of business and the alleged infringement occurs. *See* 35 U.S.C.
 9 § 1400(b); *T.C. Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. 258,
 10 259 (2017). Because the only two counts in this action are for patent infringement,
 11 and neither requirement for proper venue is met, venue in California is improper.

12 Even if venue were proper, a transfer to Massachusetts for convenience would
 13 be appropriate because all the evidence and witnesses relevant to the lawsuit is
 14 located in Massachusetts. InMode is a foreign company, and its principal place of
 15 business is not in the United States. Thus, neither party has any ties to this District.
 16 Massachusetts has a greater interest in deciding this case and it is a more convenient
 17 forum for the litigation. Accordingly, this Court should dismiss the case or, in the
 18 alternative, transfer it to the District of Massachusetts.

19 20 **I. Statement of Facts**

21 BTL is registered in Delaware and has its principal place of business in
 22 Marlborough, Massachusetts. *See* Ex. A, Wooden Dec. ¶ 3. BTL specializes in the
 23 innovation, development, and sale of equipment and treatments for the aesthetics
 24 industry in the United States. BTL, along with its affiliates has developed several
 25 innovative FDA-cleared aesthetic devices that incorporate BTL's proprietary

1 technology. BTL sells those devices in the United States to healthcare professionals,
2 and then trains those professionals on treatments using these devices. Leveraging
3 this technology, BTL has developed a series of devices, including BTL's Emfemme
4 360 and UltraFemme 360 devices. BTL discontinued the UltraFemme 360 device in
5 2018. *Id.* ¶ 5. BTL currently sells the Emfemme 360 device. *Id.* ¶ 6.

6 BTL leases a space in Beverly Hills, California, but uses it sporadically as a
7 showroom only. *Id.* ¶ 7. BTL uses the space to perform demonstration treatments to
8 educate prospective customers, or for clinical training. *Id.* ¶ 8. No BTL employees
9 work at the showroom on a regular basis, and for that reason, demonstrations are
10 conducted only by invitation and appointment. *Id.* ¶ 9. Sales rarely, if ever, occur at
11 the showroom. *Id.* BTL employees are not allowed to perform demonstration
12 treatments of the Emfemme device at the California location or anywhere else. *Id.* ¶
13 10. Further, no clinical trainings or events related to the Emfemme device are
14 conducted at the showroom. *Id.* ¶ 13. In addition, the California showroom does not
15 have any marketing regarding the Emfemme device. *Id.* ¶ 12.

16 BTL's only regular place of business in the United States is in Marlborough,
17 Massachusetts. *Id.* ¶ 3. While many of BTL's employees reside throughout the
18 United States, either as remote workers or to be close to BTL's customers, the
19 Marlborough facility is the only place in the United States that BTL employees use
20 as a regular place of business. The Marlborough location is the main locus of
21 operations for BTL; all of BTL's operations are run through that office, including
22 product development, marketing, finance, order processing, distribution, and
23 shipping. *Id.* ¶ 4. Further, BTL maintains all of its data and information that would
24 be relevant to this case at the Marlborough location. *Id.* If an inspection of the
25 Emfemme device would need to occur, the people with knowledge of the device, are
26

1 in Massachusetts. *Id.*

2 InMode, a competitor of BTL's, is a corporation organized under the laws of
3 Israel and maintains its principal place of business in Israel. *See* D.I. 1, ¶ 2. In July
4 2023, InMode acquired a portfolio of patents from a company called Viveve Inc.
5 D.I. 1, ¶ 20. InMode acquired the '511 patent as part of this portfolio. Three months
6 later, without any notice to BTL, InMode filed the above-captioned action against
7 BTL asserting infringement of the '511 patent and named the Emfemme device and
8 the UltraFemme device as infringing devices. D.I. 1.

9 **II. Argument**

10 InMode has not established proper venue for BTL in the Central District of
11 California under 28 U.S.C. § 1400(b) and the case should be dismissed under FRCP
12 12(b)(3). In the alternative, BTL requests that the Court transfer the case to
13 Massachusetts, where BTL has its only regular and established place of business.
14 Further, a transfer to Massachusetts for convenience is proper because the majority
15 of the evidence and witnesses in this case is located in Massachusetts. Further,
16 neither BTL nor InMode are residents of California, and California does not have
17 any particular interest in resolving this case between parties who are not California
18 residents.

19 **A. The action should be dismissed because venue is improper for BTL** 20 **under § 1400(b).**

21
22 The Court should dismiss this action for improper venue. Fed. R. Civ. P.
23 12(b)(3). "The district court of a district in which is filed a case laying venue in the
24 wrong division or district shall dismiss, or if it be in the interest of justice, transfer
25 such case to any district or division in which it could have been brought." 28 U.S.C.

§ 1406(a). The plaintiff bears the burden of showing that venue is properly laid in the district where the action was filed, and InMode has not done so here. *See Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979); *see also Starbuzz Tobacco, Inc. v. Gold Star Tobacco, Inc.*, No. 19-cv-00408, 2019 WL 6888044, at *2 (C.D. Cal. July 29, 2019); *Laltitude, LLC v. Dreambuilder Toy, LLC*, No. 22-cv-09324, 2022 WL 2156110, at *1 (C.D. Cal. Apr. 6, 2022) (“When a defendant files a motion to dismiss for improper venue, the plaintiff has the burden of proving that venue is proper.”).

Patent cases are governed by their own venue statute. 28 U.S.C. § 1400(b). Section 1400(b) states that venue is proper either “in the judicial district where the defendant resides,” or else “where the defendant has committed acts of infringement and has a regular and established place of business.” InMode has failed to plead facts indicating that venue is proper under either prong of the patent venue statute. The plaintiff bears the burden to show proper venue in patent cases after the defendant challenges venue. *In re ZTE (USA), Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018).

1. BTL does not reside in California and therefore venue cannot be found under the first prong of § 1400(b).

Under the first prong of the venue statute, a “domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct 1514, 1517 (2017). As InMode recognizes (*see* D.I. 1, ¶ 5), BTL is incorporated in Delaware and therefore resides in Delaware. Therefore, proper venue cannot be found for BTL under the first prong of 1400(b).

1 **2. BTL does not have a regular and established place of business**
 2 **in California and therefore venue cannot be found under the**
 3 **second prong of § 1400(b).**

4 Similarly, InMode cannot establish that BTL has a “regular and established”
 5 place of business in California to meet the requirements of the second prong of §
 6 1400(b).

7 The Federal Circuit has clarified what a plaintiff must prove to establish
 8 proper venue under this prong of the statute. *See In re Cray Inc.*, 871 F.3d 1355,
 9 1362–63 (Fed. Cir. 2017). First, “there must still be a physical, geographical
 10 location in the district from which the business of the defendant is carried out.” *Id.*
 11 at 1362. Second, the place “must be a regular and established place of business.” *Id.*
 12 Third, the place of business must be “a place *of the defendant*, not solely a place of
 13 the defendant’s employee.” *Id.* at 1363. This test is “specific,” “unambiguous,” and
 14 “restrictive,” and if any of the three requirements are not met, then venue is
 15 improper under § 1400(b). *Id.* at 1361.

16 InMode asserts that venue is proper in this District with a conclusory
 17 statement that BTL “owns and operates a brick-and-mortar storefront,” citing to
 18 BTL’s website listing the location. D.I. 1, ¶ 10. But, as the Federal Circuit has
 19 found, “the mere fact that a defendant has advertised that it has a place of business .
 20 . . is not sufficient; the defendant must actually engage in business from that
 21 location.” *In re Cray*, 871 F.3d at 1364. And, while BTL does have a physical
 22 location in Beverly Hills, the location is simply a showroom, and BTL does not
 23 engage in business regularly at that location; it does so only sporadically.

24 BTL’s showroom is not an office space, nor does it have an employee
 25 regularly staffed at the location. Wooden Decl. ¶ 9. No employees regularly report
 26 to the showroom. *Id.* As the Federal Circuit has noted, “a ‘regular and established

1 place of business’ requires the regular, physical presence of an employee or other
2 agent of the defendant conducting the defendant’s business.” *In re Google LLC*, 949
3 F.3d. 1338, 1345 (Fed. Cir. 2020). Because there is no regular presence of
4 employees at the showroom, the showroom is used for customer demonstrations as
5 needed and only by appointment. Wooden Decl. ¶ 9. It is also used for limited
6 clinical trainings. Sales are rarely, if ever, completed in the showroom. *Id.* Rather,
7 the sales are normally completed at the customer’s office. *Id.* BTL does not use the
8 showroom for any other reasons outside the limited clinical trainings and
9 demonstrations. BTL’s use of the location is sporadic, not regular, and courts have
10 found that under those circumstances, venue is not proper in that district. A business
11 may be “regular” only if it operates in a “steady[,] uniform[,] orderly[, and]
12 methodical” manner. *In re Cray*, 871 F.3d at 1362. “Sporadic activity cannot create
13 venue.” *Id.*

14 In its Complaint, InMode states that “BTL provides demonstrations and
15 training for healthcare professionals, including treatments using the Accused
16 Products.” D.I. 1, ¶ 10. InMode is wrong. BTL ceased to sell the UltraFemme
17 device in 2018, over five years before InMode’s Complaint was filed. And, while
18 the California showroom stores an Emfemme device, the device has never been
19 operated at the California location. Wooden Decl. ¶ 11. Further, BTL employees are
20 not allowed to operate the device for trainings or demonstrations. *Id.* ¶ 10. The
21 showroom likewise contains no marketing materials directed towards the Emfemme
22 device. *Id.* ¶ 12.

23 Because the showroom in California is infrequently and sporadically used,
24 BTL does not have a “regular and established” place of business in California.

1 Therefore, venue is improper and the case should be either dismissed or transferred
2 to the District of Massachusetts, where venue is proper.

3 **B. Even if venue were proper, the interests of justice and convenience**
4 **weigh in favor of transfer to Massachusetts**

5 If the Court determines that venue is proper in this district, BTL nevertheless
6 requests that the Court transfer this action to Massachusetts. The Court has
7 discretion to transfer a civil action “[f]or the convenience of parties and witnesses,
8 [and] in the interest of justice.” 28 U.S.C. § 1404(a); *In re Juniper Networks, Inc.*,
9 14 F.4th 1313, 1318 (Fed. Cir. 2021).

10 In patent litigation, motions to transfer under 28 U.S.C. § 1404(a) are
11 governed by the law of the regional circuit. *In re TS Tech USA Corp.*, 551 F.3d
12 1315, 1319 (Fed. Cir. 2008). The Ninth Circuit has explained that factors used in the
13 forum non conveniens context are helpful in deciding a § 1404 transfer motion.
14 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986);
15 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000) (identifying
16 factors). These factors include (1) the location where the relevant agreements were
17 negotiated and executed; (2) the state that is most familiar with the governing law;
18 (3) the plaintiff’s choice of forum; (4) the parties’ respective contacts with the
19 forum; (5) the contacts relating to the plaintiff’s cause of action in the chosen forum;
20 (6) the differences in the costs of litigation in the two forums; (7) the availability of
21 compulsory process to compel attendance of unwilling non-party witnesses; (8) the
22 ease of access to sources of proof; (9) the presence of a forum selection clause; and
23 (10) the relevant public policy of the forum state, if any. *Jones v. GNC Franchising,*
24 *Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). The *Jones* factors help courts determine
25 venue by considering the “center of gravity” for each case, a philosophy which
26 reasons that “the district court ought to be as close as possible to the milieu of the

1 infringing device and the hub of activity centered around its production.” *Zinus, Inc.*
2 *v. Classic Brands, LLC*, No. CV 19-5455 PSG (EX), 2019 WL 8226076, at *3 (C.D.
3 Cal. Oct. 3, 2019) (quoting *Nanografix Corp. v. Pollard Banknote Ltd.*, No. CV 18-
4 6735-GW(RAOx), 2019 WL 2240439, at *5 (C.D. Cal. Feb. 28, 2019)).

5 The *Jones* factors applicable to this case, taken together, weigh in favor of
6 transfer to Massachusetts.¹ *First*, regarding *Jones* factor 3, InMode’s status as a
7 foreign entity means its choice of forum is given little, if any, deference. *Second*,
8 regarding *Jones* factors 4 and 5, both parties lack contacts with the district of
9 California. BTL’s contacts are mostly with Massachusetts and InMode did not
10 identify any contacts with California. *Third*, regarding factors 6 and 8, the majority
11 of the evidence regarding this patent infringement lawsuit will be in Massachusetts.
12 *Finally*, regarding factor 10, because neither party is a resident of California,
13 California does not have an interest in adjudicating the instant action. Meanwhile,
14 Massachusetts has an interest in adjudicating cases involving its resident
15 corporations. Therefore, the *Jones* factors weigh in favor of transferring this case to
16 Massachusetts.

17 **1. *Jones* 3: Plaintiffs’ choice of forum: InMode is a foreign**
18 **entity and, therefore, its choice of forum is given little**
19 **deference.**

20 Because InMode is a foreign entity, its choice of forum is given little
21 deference and *Jones* factor 3 is neutral regarding transfer. “Because the central
22

23 ¹ Because there are no agreements at issue in this case, and because the case arises under
24 federal patent law, the following *Jones* factors are irrelevant here: (1) the location where the
25 relevant agreements were negotiated and executed; (2) the state that is most familiar with the
26 governing law; and (9) the presence of a forum selection clause. Further, BTL is unaware of any
unwilling non-party witnesses that may be necessary regarding this case, making factor seven (the
availability of compulsory process to compel attendance of unwilling non-party witnesses) neutral.

1 purpose of any forum non conveniens inquiry is to ensure that the trial is
2 convenient, a foreign plaintiff's choice deserves less deference." *See Piper Aircraft*
3 *Co. v. Reyno*, 454 U.S. 235, 255–56 (1981); *Ningbo Futai Elec. Ltd. v. QVC, Inc.*,
4 No. 5:22-cv-02015-MCS-RAO, 2023 WL 4291652, at *2 (C.D. Cal. May 8, 2023).
5 Here, InMode is a corporation organized under the laws of Israel and maintains its
6 principal place of business in Israel. *See* D.I. 1, ¶ 2. Because InMode is a foreign
7 entity, its choice of forum deserves little, if any, deference.

8 **2. Jones 4 and 5: Contact with the forum: The parties' lack of**
9 **contacts in California weigh in favor of transfer to**
10 **Massachusetts.**

11 BTL's main location in the United States is in Massachusetts and it has
12 significant contacts with Massachusetts, far outweighing its minimal contacts in
13 California. In its Complaint, InMode did not identify any contacts that it might have
14 in California. *See Ningbo Futai*, 2023 WL 4291652, at *2–3. For that reason, *Jones*
15 factors 4 and 5 weigh in favor of transfer to Massachusetts.

16 BTL is headquartered in Massachusetts. Wooden Dec. ¶ 3. The Marlborough
17 facility is the only place in the United States that BTL employees use as a regular
18 place of business. The personnel who have knowledge relevant to this case, such as
19 those individuals involved in the sales and marketing of the Emfemme device, are in
20 Massachusetts. *Id.* ¶ 4. BTL maintains its stock of its devices in Massachusetts and
21 ships the devices from that location. *Id.* Further, documents and information
22 pertaining to this action, and the personnel with knowledge of those documents, are
23 likewise in Massachusetts. In contrast, BTL's only contacts with California are sales
24 of BTL's products, and a sporadically used showroom. Similarly, InMode is a
25 foreign company and in its Complaint identified no contacts with California. D.I. 1,
26 ¶ 2.

1 Given the lack of contacts the parties have with California and BTL's
2 significant contacts with Massachusetts, this factor weighs in favor of transfer of the
3 action to Massachusetts.

4 **3. *Jones* 6 and 8: Cost of litigation and access to sources of**
5 **proof: The witnesses and evidence weigh in favor of transfer**
6 **to Massachusetts.**

7 *Jones* factors 6 and 8 weigh in favor of a transfer to Massachusetts. Because
8 the witnesses and evidence regarding the Accused Devices are in Massachusetts,
9 access to sources of proof is easier in Massachusetts and litigating in Massachusetts
10 will reduce litigation costs.

11 Court have transferred patent cases to venues where the activities related to
12 the accused activity, and therefore the sources of proof, are located. "[I]n patent
13 infringement actions, the preferred forum is that which is the center of gravity of the
14 accused activity. The district court ought to be as close as possible to the milieu of
15 the infringing device and the hub of activity centered around its production. This
16 location is often where the development, research, and marketing of the accused
17 product occurred." *Signal IP, Inc. v. Ford Motor Co.*, No. LA CV14-03106 JACK
18 (JEMx), 2014 WL 4783537, at *3 (C.D. Cal. Sept. 25, 2014) (citations omitted); *see*
19 *also In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) ("In patent
20 infringement cases, the bulk of the relevant evidence usually comes from the
21 accused infringer. Consequently, the place where the defendant's documents are
22 kept weighs in favor of transfer to that location.").

23 Here, most of BTL's activities regarding the accused devices occur in
24 Massachusetts. As stated previously, BTL's documents and personnel relating to the
25 devices are in Massachusetts. If an inspection were to occur of the devices, the
26 inspection would be in Massachusetts because the individuals with knowledge about

1 the device are located in Massachusetts. Wooden Decl. ¶ 4. *See Fox Factory, Inc. v.*
2 *Sram, LLC*, No. 2:22-cv-04805-DOC-JC, 2023 WL 6370879, at *3–4 (C.D. Cal.
3 Feb. 1, 2023) (noting that transfer was proper because “this action concerns physical
4 products”). While BTL notes it has an Emfemme device in its California showroom,
5 that device is not used for demonstrations or clinical trainings. Wooden Decl. ¶ 10.
6 Further, the California showroom does not maintain marketing information
7 regarding the Emfemme device in the California showroom. *Id.* ¶ 12. Nor does the
8 showroom have any information regarding the UltraFemme device, which BTL
9 discontinued in 2018. *Id.* ¶ 5. Most—if not all—of the evidence relevant to this case
10 is in Massachusetts. For the same reason, transfer to Massachusetts would cut down
11 on litigation costs because BTL’s witnesses and corporate representatives would not
12 have to travel between Massachusetts and California for hearings, discovery, and
13 trial.

14 Because the “center of gravity” is in Massachusetts, this factor weighs in
15 favor of transfer to Massachusetts.

16 **4. Jones factor 10: The public interest factors weigh in favor of**
17 **transfer to Massachusetts.**

18 Public interest factors include determining which district has an interest in the
19 controversy and other administrative difficulties, both of which weigh in favor of
20 transfer to Massachusetts. *See Ningbo Futai*, 2023 WL 4291652, at *4.

21 First, because BTL’s headquarters is in Massachusetts and all relevant
22 witnesses and evidence are in Massachusetts, Massachusetts has an interest in
23 having the controversy decided within its own district. *See id.* (“‘The local interest
24 in having localized controversies decided at home’ favors transfer.” (citing *Decker*,
25 805 F.2d at 843)).

Second, Massachusetts suffers from less court congestion than the Central District of California. For example, from the 12 month period ending March 31, 2023, the Central District of California had 14,038 cases filed. In comparison, the District of Massachusetts had 2,833 cases filed. *See* Table C-3—U.S. District Courts—Civil Federal Judicial Caseload Statistics (March 31, 2022), U.S. Courts, <https://www.uscourts.gov/statistics/table/c-3/federal-judicial-caseload-statistics/2023/03/31> (last visited December 14, 2023). Further, the Central District of California lists 34 active judges, *See* May 23, 2023 Memorandum, Central District of California, <https://www.cacd.uscourts.gov/sites/default/files/seniority-list.pdf> (last accessed Jan. 8, 2024). When compared to the District of Massachusetts, which lists 20 active judges, each judge in the Central District of California has nearly 3 times more cases than those in the District of Massachusetts. *See* Judges, United States District Court for the District of Massachusetts, <https://www.mad.uscourts.gov/general/judges.htm> (last accessed Jan. 8, 2024). While not dispositive, other courts in this district have used this fact to demonstrate that “this action would be much less likely to suffer from administrative difficulties resulting from docket congestion in” Massachusetts. *See Ningbo Futai*, 2023 WL 4291652, at *4.

Therefore, because Massachusetts has an interest in resolving the instant dispute, and because Massachusetts courts are less congested, the public interest favors transfer to Massachusetts.

III. Conclusion

For the foregoing reasons, the Court should dismiss the case due to improper venue or else transfer the case to the District of Massachusetts, a proper venue more convenient for the parties and witnesses.

1 DATED: January 12, 2024

Payne & Fears LLP

2 Randy R. Haj

3 Scott O. Luskin, Bar No. 238082

sol@paynefears.com

4 Randy R. Haj, Bar No. 288913

5 rrh@paynefears.com

200 N. Pacific Coast Highway, Suite 825

6 El Segundo, California 90245

7 Telephone: (310) 689-1750

8 Facsimile: (310) 689-1755

9 J.C. Rozendaal (*pro hac vice pending*)

10 Chandrika Vira (*pro hac vice pending*)

11 Josephine Kim, Bar No. 295152

12 **STERNE, KESSLER, GOLDSTEIN**

& FOX PLLC

13 1101 K Street NW, 10th Floor

14 Washington, DC 20005

15 Telephone: 202.371.2600

Facsimile: 202.371.2540

16 Attorneys for Defendant

17 BTL Industries, Inc.

18
19
20 4881-3603-6508.1

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Defendant BTL Industries Inc.,
certifies that this brief contains 3,584 words which complies with the word limit of
L.R. 11-6.1.

DATED: January 12, 2024

Payne & Fears LLP

Randy R. Haj

Scott O. Luskin, Bar No. 238082

sol@paynefears.com

Randy R. Haj, Bar No. 288913

rrh@paynefears.com

200 N. Pacific Coast Highway, Suite 825

El Segundo, California 90245

Telephone: (310) 689-1750

Facsimile: (310) 689-1755

J.C. Rozendaal (*pro hac vice pending*)

Chandrika Vira (*pro hac vice pending*)

Josephine Kim, Bar No. 295152

STERNE, KESSLER, GOLDSTEIN

& FOX PLLC

1101 K Street NW, 10th Floor

Washington, DC 20005

Telephone: 202.371.2600

Facsimile: 202.371.2540

4881-3603-6508.1